

REMARKS

In the Advisory Action mailed February 17, 2005, the examiner declined to allow applicants' claims 1-20, notwithstanding applicants' responsive arguments filed February 7, 2005 in reply to the Office Action mailed December 21, 2004. In that Office Action, the examiner finally rejected applicants' claims 1-20 for alleged obviousness under 35 USC 103, with primary reliance upon an asserted combination of Woodward, U.S. Patent 2,859,784 and Galland, U.S. Patent 4,391,172.

Accordingly, this Response Accompanying Request for Continued Examination is filed in further response to the December 21, 2004 Office Action. By this further Response, applicants' have amended independent claims 1, 10 and 12 in a manner that is respectfully submitted to distinguish more clearly and patentably from the cited references. The remaining dependent claims 2-9, 11 and 13-20 are unchanged.

Brief Discussion of the Invention as Now Claimed

As noted in applicants' prior remarks, the present invention is directed to a plug prevention device in a rotary slicing machine of the type having a rotary impeller defining a rotating "throat wall" that is upwardly open. The plug prevention device comprises a member such as an elongated rod "extending at least partially into" (claims 1 and 10, emphasis added), or "disposed generally within" (claim 12, emphasis added) this rotating inlet throat and disposed "substantially off-axis" (emphasis added) relative to an axis of impeller rotation.

A key aspect of applicants' invention is that the "plug prevention" device is positioned so that it will be struck by and therefore dislodge any food product that becomes stuck by centrifugal action against the rotating throat wall of the spinning, upwardly open impeller. In this regard, noting the examiner's remarks appended to the Advisory Action, applicants have by this Response amended independent claims 1,10 and 12 for reciting this key aspect of the invention in positive terms. That is, these claims now require the "plug prevention" device to be:

"positioned for impact engagement by food products lodged by centrifugal action against said rotating throat wall to dislodge such food products from said throat wall and thereby permit such food products to fall downwardly into said impeller for cutting".

In addition, in the prior Office Action, and in the remarks appended to the Advisory Action, the examiner characterized the supply chute 11 in the cited Woodward reference as a plug prevention device capable of performing this function. By this Response, applicants have amended independent claims 1, 10 and 12 to additionally recite:

"an overlying supply chute through which food products are supplied to fall by gravity downwardly through said rotating inlet throat and into said impeller", and

"said plug prevention member being provided as a component separate from and in addition to the overlying supply chute" (emphasis added).

The "overlying supply chute" as a structure separate from and in addition to the plug prevention member is, of course, fully supported in applicants' as-filed Specification. See, e.g., reference numeral 40 (FIGS. 1 and 3) and the accompanying Detailed Description.

By reciting the "overlying supply chute" in each independent claim 1, 10 and 12, and then additionally reciting the "plug prevention" device as a separate and additional component in each of these claims, applicants are now positively reciting a combination wherein the "supply chute" is not the "plug prevention" device, and *vice versa*.

Although applicants continue to disagree with the examiner regarding the examiner-asserted "plug prevention" properties of Woodward's supply chute 11, it is clear that Woodward does not disclose or suggest any separate and additional "plug prevention" device (*i.e.*, in addition to the examiner-asserted

supply chute 11) disposed “off-axis” in a position for positive “impact engagement” with centrifugal force-trapped potatoes, so as to strike and dislodge each such trapped potato for downward fall into the underlying impeller for cutting.

Accordingly, and as will be delineated in more detail herein, applicants respectfully assert that claims 1-20 as now presented are clearly in condition for allowance over the Woodward reference, considered alone or in combination with any other reference of record.

Discussion of the Cited References

The Woodward reference (U.S. Patent 2,859,784) discloses a rotary slicing machine having an off-axis supply chute 11 for delivering potatoes into the interior of a housing wherein a rotary side-open impeller sweeps the potatoes into cutting engagement with peripherally mounted cutting knives. The examiner agrees that Woodward’s machine does not define an “upwardly open” inlet throat for his rotary impeller (Office Action, p. 2, para. 2), but contends that a person skilled in the art would find it obvious in view of the Galland reference (U.S. Patent 4,391,172) to re-orient Woodward’s machine to provide an “upwardly open” impeller inlet throat (Office Action, p. 3, lines 1-3). See also the examiner’s remarks appended to the Advisory Action.

The examiner continues to assert that Woodward’s supply chute 11 constitutes a “plug prevention member” located at an “off-axis” position. Although applicants’ continue to disagree with the examiner on this point, the accompanying revisions to independent claims 1, 10 and 12 are respectfully believed to address and overcome this point of contention. That is, by now reciting the “plug prevention” device as a separate component in addition to the “overlying supply chute”, applicants have clearly and positively recited a combination structure that is not disclosed or suggested in any way by the Woodward reference. Simply stated, Woodward has no separate and additional structure, in addition to his supply chute 11, that can arguably correspond to applicants’ claimed “plug prevention” device.

Moreover, any obvious combination of the cited Woodward and Galland references fails to support a rejection of applicants’ claims as now presented.

In this regard, Galland discloses an upper hopper 16 for feeding potato slices into an upwardly open impeller. Galland, like Woodward, has no additional and separate “plug prevention” device mounted “off-axis” as recited in applicants’ claims. In this regard, applicants note that independent claims 1 and 12 further require the recited rotary impeller to be “movable relative to said plug prevention” member or means, whereas independent claim 10 further requires the “plug prevention rod” to be “stationary”. While Galland shows an on-axis mounted impeller shaft 80, such shaft clearly rotates with the impeller and is not mounted “off-axis” – both as required by applicants’ claims. Woodward fails to provide any teaching or suggestion for re-orienting Galland’s impeller shaft 80 an off-axis location, or to re-mount this impeller shaft so that it is stationary relative to the impeller.

Nothing in the Woodward or Galland references discloses or suggests applicants’ claimed “plug prevention” device that is (i) separate from and in addition to an overlying supply chute, (ii) disposed “off-axis” relative to an axis of rotation on an upwardly open impeller, (iii) mounted so that the impeller moves relative to the “plug prevention” device, and (iv) positioned for positive “impact engagement” with centrifugal force-trapped potatoes, so as to strike and dislodge each such trapped potato for downward fall into the underlying impeller for cutting.

Accordingly, applicants’ respectfully contend that claims 1-20 are now presented are clearly in condition for allowance over any conceivable combination of the Woodward and Galland references.

Applicants further note the examiner’s citation (in the Office Action dated December 21, 2004) of Burch, U.S. Patent 5,385,074 and Bogie, U.S. Patent 2,631,785 as secondary references to support the rejection of applicants’ dependent claims 2-6 and 13-17 for alleged obviousness. In the Advisory Action, the examiner makes further reference to Burch, contending “use of plug prevention member is well known in the art such as taught in Burch [sic]”. But, in the Advisory Action, the examiner makes no further mention of the previously-cited Bogie reference.

Fundamentally, the Burch reference fails completely and entirely to disclose or suggest a “plug prevention” device of the type recited in applicants’

claims. To the contrary, Burch discloses a machine for pushing potatoes into cutting engagement with a special knife used to cut helical strip pieces. Burch uses an array of “rotatable rods arranged in a circle” (Abstract, line 7) to engage and push each potato axially through the special cutter. Importantly, in Burch, there is no opportunity for a potato to fall downwardly against and become trapped by centrifugal force against any upwardly open throat wall of a spinning impeller – all as required and recited by applicants’ claims. Similarly, in Burch, there is no hint of any teaching or suggestion regarding positive positioning of any one of the spinning rods for positive “impact engagement” with centrifugal force-trapped potatoes, so as to strike and dislodge each such trapped potato for downward fall into the underlying impeller for cutting. In short, Burch’s mere disclosure of rods, mounted and constructed in a different array for a different purpose, falls far short of any teaching applicable to applicants’ claimed invention.

The Bogie reference, as previously noted in applicants’ remarks included with the Response filed February 7, 2005, is completely unrelated to applicants’ claimed invention. In this regard, since the examiner may have dropped reliance upon the Bogie reference in view of the failure to mention Bogie in the Advisory Action, and for the sake of brevity, applicants refer to and incorporate by reference those prior remarks. It is sufficient here to mention only that the Bogie reference pertains to a machine for crushing rocks; Bogie’s machine is not designed nor is it capable of use for guiding “food items without crushing them”, as asserted by the examiner in the Office Action. No person skilled in the relevant art of applicants’ claimed invention would look to or find any useful teaching from Bogie’s rock crusher.

Conclusion

In conclusion, in view of the foregoing remarks, applicants respectfully resubmit claims 1-20 for reconsideration and allowance. A Notice of Allowance is believed to be in order, and is therefore respectfully requested.

Respectfully submitted,

KELLY LOWRY & KELLEY, LLP

Aaron T. Borrowman
Registration No. 42,348

ATB:cw
6320 Canoga Avenue, Suite 1650
Woodland Hills, California 91367
(818) 347-7900